

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MR. ELECTRIC CORP.,)
)
 Plaintiff,)
)
 v.)
)
 REIAD KHALIL, an individual,)
 and ALBER ELECTRIC CO., INC.,)
)
 Defendants.)
 _____)

No. 06-2414-CM

ORDER

This case is before the court on Plaintiff’s Motion for Discovery Sanctions, Including Entry of Judgment by Default, as to Defendant Alber Electric Co., Inc. (Doc. 68). On October 12, 2007, Magistrate Judge Rushfelt entered a Report and Recommendation, recommending that plaintiff’s motion be sustained in part and overruled in part. Specifically, Judge Rushfelt recommended sustaining plaintiff’s request for entry of default judgment against defendant Alber Electric pursuant to Fed. R. Civ. P. 55(a) and sanctioning defendant Alber Electric \$1,000. Judge Rushfelt recommended overruling the remainder of plaintiff’s motion, including the request to strike defendant Alber Electric’s answer.

Within ten days following service of Judge Rushfelt’s order, plaintiff objected to the portion of Judge Rushfelt’s order granting judgment by default pursuant to Rule 55(a). Instead, plaintiff submits that the court should enter judgment by default pursuant to Rule 55(b). Plaintiff did not object to Judge Rushfelt’s order in any other respect, and defendant did not timely file any objections. Nor did defendant respond to plaintiff’s objection.

After reviewing Judge Rushfelt's Report and Recommendation, the court determines that it should be adopted with the exception of the reference to Rule 55(a) as noted by plaintiff. Although the substance of plaintiff's motion only sought an entry of default pursuant to Rule 55(a)—despite the title of plaintiff's motion— defendant Alber Electric indicated in response that it consented to “entry of *judgment* by default, including an award of the permanent injunction requested by Mr. Electric” (emphasis added). Defendant Alber Electric also clarified that it opposes plaintiff's claim for damages, and Judge Rushfelt mentioned twice that the amount of damages remains to be determined.

In light of defendant's consent to judgment by default and the references to “judgment” in Judge Rushfelt's Report and Recommendation, the court determines that the more appropriate Rule citation is to Rule 55(b). Plaintiff's objection is sustained.

IT IS THEREFORE ORDERED that the court adopts the Report and Recommendation of Judge Rushfelt with the exception of the references to Rule 55(a), which is changed to Rule 55(b). Plaintiff's Motion for Discovery Sanctions, Including Entry of Judgment by Default, as to Defendant Alber Electric Co., Inc. (Doc. 68) is granted in part and denied in part.

IT IS FURTHER ORDERED that plaintiff and defendant Alber Electric shall confer and jointly notify the court of what, if any, further proceedings are necessary before the court enters judgment in favor of plaintiff.

Dated this 7th day of November 2007, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge